

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

**FILED**

**DATE: November 17, 2009**

**3:13 O'Clock P.M.**

**JEANNE HICKS, CLERK**

**BY: Rachel Roehe**  
Deputy

**DIVISION: 6**

**HON. THOMAS B. LINDBERG**

**CASE NO. P1300CR20081339**

**JEANNE HICKS, CLERK**

**By: Rachel Roehe, Deputy Clerk**

**DATE: November 17, 2009**

**TITLE:**

**STATE OF ARIZONA**

(Plaintiff)

**vs.**

**STEVEN CARROLL DEMOCKER**

(D-1)

**COUNSEL:**

**Yavapai County Attorney**

(For Plaintiff)

**John Sears**

107 North Cortez Street, Suite 104  
Prescott, AZ 86301

**Larry Hammond**

**Anne Chapman**

OSBORN MALEDON, P.A.  
2929 North Central Avenue, 21<sup>st</sup> Floor  
Phoenix, AZ 85012

(For Defendant)

**HEARING ON:**

Evidentiary Hearing Re: Pending Motions

**NATURE OF PROCEEDINGS**

**COURT REPORTER**

Roxanne Tarn

**START TIME: 10:11 a.m.**

**APPEARANCES:** Joseph Butner, Deputy County Attorney  
Steven DeMocker, Defendant  
John Sears, Counsel for Defendant  
Larry Hammond, Counsel for Defendant  
Anne Chapman, Counsel for Defendant  
Christopher DuPont, Counsel for Victims Charlotte and Katherine DeMocker

Charlotte DeMocker addresses the Court.

Katherine DeMocker addresses the Court.

Counsel for the Victims addresses the Court.

The Court notes that the matter of release conditions remains under advisement.

With regard to the pleading filed this morning, the Court will redact any comments made by the girls to Victim Services. The Court requests that a redacted version be submitted showing what information was provided by the County Attorney's Office to make a complete record of the advice given.

Counsel for the Victims is excused from the remainder of today's hearing.

Court and Counsel discuss scheduling issues.

15.1 Motion to Strike Death Penalty Notice

Counsel argue the Motion.

The Court finds that the State's Notice of Death Penalty in this case was timely and took place no later than 60 days after arraignment in Superior Court and it put the defense on notice that death penalty was being sought. The Court will not strike the allegations at this time with regard to the F6 amended allegation that the State did not make until June 29, 2009, in finding that no prejudice has been shown with regard to that. The Motion to Strike is **DENIED**.

Election of F6 Aggravators

Counsel present argument.

The Court finds that the State has made its election that it is alternatively cruelty or depravity as they have listed in their Chronis memorandum. The Court believes that the motion is covered and moot. The Court believes that the State's intention is now clear regarding the F6 aggravators.

~\*~\*~\*~\*~ Recess – 10:18 a.m. ~\*~\*~\*~\*~

At 10:42 a.m., Court reconvenes with the presence of all parties and counsel previously present.

Motion to Set Schedule for Witness Interviews

Counsel present argument.

The Court **ORDERS** that the State shall meet with Mr. McDormett and go through the witness names and develop an operational list distinguishing which witnesses will likely be called and those not likely to be called, so that interviews can be set in a priority. The State shall distinguish which interviews the State does not need to be personally present at versus the ones that the State will need to set up by the virtue of the fact that the witness will not talk to the defense side unless the State sets up the interview. This shall be completed by November 25, 2009.

Motion to Compel with regard to certain Biological Evidence

Counsel present argument.

With regard to the chain of custody, the Court **ORDERS** that both the front and back of the pages shall be provided to the defense.

The State shall find out if a jail program specifies whether or not items are sent in a separate format than the evidence sheets; not the location, but when they are sent out to either a lab or other location, so that a comparison can be made between the documents kept by the Sheriff's Office as to the legitimate timing of that. The State shall check whether this exists and if it does, the Court requires that the State shall disclose the timing of when the various items were sent out excluding the location. The Court directs that the information shall be provided to the defense as soon as possible.

The Court directs that the State shall provide to the defense a list of the software programs used in the DNA testing in the case, whether from the DPS Crime Lab or Sorensen. The Court requests specifically the name of the software program, manufacturer and which version was used by the respective lab and an indication of whether or not the version was used with or without modification by the lab. The State shall obtain information from the two labs as to whether the results produced are dependent upon instructions contained in macros. If the answer is affirmative, provide copies of the macros used or identification of how to obtain copies of the macros

used or indicate if it is something that is proprietary. The Court requests information regarding if the macros are commercially available, if they can identify that they are commercially available and what the instructions are. If they are standard instructions within the field of expertise the Court does not believe that they need to specify anything other than that. If they are something specific that modifies the methodology so that the methodology can be replicated by the experts, if any, hired by the defense, the Court believes that the defense needs to know that information. The Court is only ordering information and not directing copies to be provided or research provided. The Court **GRANTS** number 5 of the reply set of paragraphs.

The Court asks the State to check into what the cost represents with Sorensen and what the objection is to their lab protocols. The Court requests what Sorensen anticipates that the cost would be for the lab protocols.

The Court directs both sides to work together to see if Sorensen or the DPS lab would allow the other side to be present and participate.

The State shall consult with the DPS crime lab and provide the defense with disclosure of what the State is asking to be tested, so that a timeline can be put into place. The Court **ORDERS** that the State shall provide notice of what items are being tested including bates number, timeframe, what lab is doing the testing, what type of testing is proposed, whether it is being done at a location for which there can be cooperative presence by an expert from the other side.

~\*~\*~\*~\*~ Recess – 11:59 a.m. ~\*~\*~\*~\*~

At 1:34 p.m., Court reconvenes with the presence of all parties and counsel previously present.

Motion for Taking Physical Evidence in the form of Handwriting

Counsel present argument.

The Court authorizes the taking of physical evidence in the form of handwriting exemplars under the direction of the State's expert. The Court first wants Counsel to meet to see if they can enter into a stipulation regarding any of the particular questioned documents that they have. If they are unable to reach an agreed-upon stipulation by December 1, 2009, then the Court authorizes the taking of the handwriting samples. The Court signs the order this date. The Court notes that it is not limiting Mr. Hale on what samples he takes.

Motion Regarding Victim's Rights Issues

Counsel present argument.

The Court **DENIES** the Motion specifically for the Court to declare 13-4431 and/or 13-4433(b) through (e) and specifically Rule 39(b)(11) as unconstitutional.

Court and Counsel discuss scheduling issues.

The Court confirms the Suppression and Franks hearing set for November 18, 2009, at 9:00 a.m.

~\*~\*~\*~\*~ Recess – 2:30 p.m. ~\*~\*~\*~\*~

At 2:46 p.m., Court reconvenes with the presence of Counsel only. The Defendant's presence is waived.

Court and Counsel discuss issues regarding the Chronis hearing.

Court and Counsel discuss issues regarding coming up on 60 days for ruling on the release motion.

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Court and Counsel discuss mental health issues.

Court and Counsel discuss scheduling issues.

**END TIME: 3:13 p.m.**

cc: VS (e)  
Dean Trebesch (Contract Administrator) (PD) (e)  
YCSO (e+)  
Christopher DuPont, Trautman DuPont PLC, 245 W Roosevelt, Ste. A Phoenix, AZ 85003,  
Counsel for Victims Charlotte and Katherine DeMocker